



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In application of:)

Christopher Richard Uhlik et al.)

Application No: 09/753,266)

Filed: December 29, 2000)

For: CHANNEL ALLOCATION BASED ON)
RANDOM PLUS PLANNED PROCESS)

Examiner: Naghmeh Mehrpour

Art Unit: 2617

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Final Office Action mailed October 26, 2006, and in conjunction with the Notice of Appeal filed concurrently herewith, Applicants respectfully request review of the Final rejection of the claims of the above-referenced application in view of the following.

Claims 1, 16, 34, 36, 60, 63, and 64 are the independent claims pending in the above-referenced patent application, and are the subject of this Request. In the Final Office Action mailed October 26, 2006, these claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,687,171 of Shin et al. (hereinafter "Shin") in view of U.S. Patent No. 5,680,398 of Robinson (hereinafter "Robinson"). Applicants respectfully submit that the Final Office Action includes several errors.

As a first matter, Applicants submit that the Final Rejection as issued does not provide Applicants with an opportunity to respond. Applicants note that the Final Office Action is self-conflicting in its interpretation of the Shin reference. At page 2, in the "Detailed Action" section, the Final Office Action asserts that "Shin does not specifically mention receiving a random access request for a traffic channel," and cites Robinson for this element. However, in contrast to this statement, in the "Response to Arguments" section, at page 22, the Final Office Action asserts that "Shin teaches a method/apparatus of operating a base station [including] receiving a request for a traffic channel of a plurality of channels on a first random traffic channel of the plurality of traffic channels, the traffic channels to be selectively allocated by the base station for communication with a user terminal (see figure 2, S103, col. 3, lines 41-54)." Applicants are left to wonder what interpretation is actually being used to reject the claims. As per Applicants review of the suggested sections pointed to at page 22 of the Office Action, there is no support in the reference to reject Applicants' claims. Thus, Applicants are led to agree with the statement at page 2 of the Office Action that admits that Shin does not disclose or suggest at least one feature of the claims. Further complicating the situation is the absolute lack of reasoning or explanation in the Office Action, which leaves Applicants unable to understand what interpretation of the reference is being given that it could possibly suggest the features of Applicants' claims. Applicants are not required to guess at what rejection the Office Action is attempting to make. Thus, the Final Office Action fails to state a rejection to which Applicants can respond, and therefore, Applicants have no duty to respond. Therefore, the claims should either be allowed, or, if the Office is to maintain the rejection of the claims, a proper, prima facie case of unpatentability should be issued in a subsequent non-final Office Action.

Furthermore, Applicants have already responded to the rejection at page 2 with a reasoned argument in a response of August 14, 2006. No counter reasoning or argument has been provided to suggest why Applicants' argument was not accepted. In "response" to Applicants'

arguments, Applicants received a bare assertion that the reference does indeed disclose the invention.

Applicants submit that despite the sections pointed to at page 22 of the Final Office Action, there is no basis to reject Applicants' claims on the cited reference. Step S103 of Shin is discussed beginning at col. 3, lines 41-54, and continues to col. 4, line 5. The entirety of that section of the cited reference recites in full:

In step S101, the control unit (105) of a base station reads the strength of a signal that has been measured and provided at an output of the unit (102) for measuring the strength of a signal received during an interval that is shorter than that requested by a call. For example, it can be about 10% of the average call arrival interval.

In step S102, the margin allowed for signal strength is calculated by subtracting the size of a received signal that has been read from the total interferences allocated by the network.

In step S103, the evaluation on whether a new radio channel has been requested is made and if not, step S101 is carried out. **If the evaluation result shows that a request has been made, the operation proceeds to step S104. In step S104 an evaluation is made on whether the signal strength required for allocating radio channels according to the channel request made in step S103 exceeds the limit of the margin calculated in step S102.**

Emphasis added. As Applicants have understood, an allocation is made for a channel if sufficient signal strength is determined to exist in response to a request. While Applicants understand that the reference recites the terms "request" and "allocate," Applicants are unable to understand how a person of skill in the art could interpret the reference to suggest Applicants' claims. The reference fails to disclose or suggest anything having to do with the request, how it is received, or how it is sent. Providing a prima facie case of obviousness under MPEP § 2143 requires that every element be explicitly shown or implicitly required in the reference. The reference makes no suggestion of how a request is received, which means it is mere speculation to suggest that the reference discloses receiving a random access request for a traffic channel on a first random traffic channel, as recited in Applicants' claims. Applicants submit that the silence of the reference as to the manner of receiving the request is evidence of the fact that traditional methods are assumed to be employed. No reasonable interpretation can be made to suggest that the Shin reference used anything other than conventional methods (namely, a random access control channel).

In contrast to Shin's use of conventional random access control methods, Applicants' claim 1 recites the following:

Receiving a random access **request for a traffic channel** of a plurality of traffic channels **on a first random traffic channel** of the plurality of traffic channels, the traffic channel to be selectively allocatable by the base station for communication with a user terminal;

Determining whether a traffic channel of the plurality of traffic channels is available to allocate to the requestor; and

Communicating to the requestor whether a traffic channel of the plurality of traffic channels is available.

Claims 34, 36, and 64 recite similar limitations directed to sending or receiving a request for a traffic channel, on a random traffic channel.

Claim 41 recites the following:

Receiving a request for an access channel of a plurality of channels **on a first unallocated channel** of the plurality of channels;

Determining whether an access channel of the plurality of channels is available; and

Communicating to the requestor whether an access channel of the plurality of channels is available.

Claims 16, 60, and 63 recite similar limitations directed to sending or receiving a request for a channel on an unallocated channel.

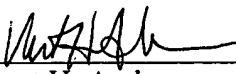
In contrast to the traditional dedicated channel approach, claims 1, 34, 36, and 64 recite sending or receiving a request for a **traffic channel** on a randomly selected **traffic channel**. Thus, in the claimed invention, requests for access are not received on a control channel or assigned random access channel; rather, **requests are received on one of same traffic channels** that are allocatable by the base station for communication with the user terminals, as recited in claim 1. Similarly, claims 16, 60, and 63 recite sending or receiving a request for access on an **unallocated channel**, not on a channel dedicated or assigned to receive such requests.

For completeness in response, Applicants feel compelled to point out the deficiencies in Robinson as well. Robinson discusses a control channel dedicated to receiving random access requests. See col. 4, lines 62 to 66 and Fig. 1. Robinson further discusses temporarily assigning an uplink channel, previously functioning as a traffic channel, as a random access channel and using the uplink channel to receive random access requests. See col. 3, lines 2 to 22; col. 5, lines 4 to 11 and Fig. 1; col. 5, line 64 to col. 6, line 11 and Fig. 2. As Applicants have understood Robinson, the reference only allows random access requests on such **assigned channels**. See *id.* Thus, Robinson fails to disclose or suggest a channel request on a **random traffic channel**, as recited in claims 1, 34, 36, and 64, or a channel request on an **unallocated channel**, as recited in claims 16, 41, 60, and 63.

Thus, the references, either alone or in combination, fail to disclose or suggest at least one element of the invention as recited in the independent claims. Therefore, Applicants submit that the cited references fail to support an obviousness rejection under MPEP § 2143 for failing to disclose every element of the claimed invention. Applicants thus submit that the Final rejection of the claimed invention is improper, and respectfully request that the rejection be withdrawn.

Respectfully submitted,
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